

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Appellant,

v.

ABN AMRO BANK N.V. (presently known as
THE ROYAL BANK OF SCOTLAND, N.V.),

Appellee.

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Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05354 (CGM)

Case No. 1:20-cv-03684-(VEC)

**STIPULATION AND ORDER TO VACATE
BANKRUPTCY COURT JUDGMENT AND REMAND**

Irving H. Picard, Trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff (“Appellant”), and ABN

AMRO Bank N.V.¹ (“Appellee,” and together with Appellant, the “Parties”), by and through their respective undersigned counsel, agree as follows:

WHEREAS, the above-captioned appeal (the “Appeal”) was commenced on May 12, 2020 by the filing of a notice of appeal from the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) with this Court. ECF No. 1.

WHEREAS, Appellant appeals from the Bankruptcy Court’s final judgment entered in *Picard v. ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland, N.V.)*, Adv. Pro. No. 10-05354 (SMB) (Bankr. S.D.N.Y. Apr. 10, 2020), ECF No. 201 (the “Final Judgment”), resulting in the dismissal of all of Appellant’s claims against Appellee.

WHEREAS, on May 28, 2020, Appellant moved this Court for a stay of the Appeal (the “Motion to Stay Appeal”) pending a decision by the Second Circuit in two similarly situated actions: *Picard v. Citibank, N.A.*, No. 20-1333 (2d Cir.) (“Citibank Second Circuit Appeal”), and *Picard v. Legacy Capital Ltd.*, No. 20-1334 (2d Cir.) (together with the Citibank Second Circuit Appeal, the “Related Appeals”).

WHEREAS, on June 3, 2020, Appellee, in responding to Appellant’s Motion to Stay Appeal, requested that the Court defer action on the motion until after it decides Appellee’s then-forthcoming motion pursuant to 28 U.S.C. § 158(d)(2) to certify the Appeal for direct appeal to the Second Circuit so that it could be heard at the same time as the Related Appeals. ECF No. 10.

WHEREAS, on June 8, 2020, the Court granted Appellant’s Motion to Stay Appeal and stayed the Appeal (the “Stay”), with an exception for Appellee’s contemplated motion to certify the Appeal for direct appeal to the Second Circuit. ECF No. 12.

¹ ABN AMRO Bank N.V. changed its name to The Royal Bank of Scotland N.V. on February 6, 2010, and then to NatWest Markets N.V. on May 30, 2018.

WHEREAS, on June 13, 2020, Appellee moved the Court to certify the Appeal for direct appeal to the Second Circuit, ECF No. 13, and on July 16, 2020, the Court granted Appellee's motion, ECF No. 22.

WHEREAS, on July 21, 2020, Appellee filed a petition for direct appeal under 28 U.S.C. § 158(d)(2) with the Second Circuit. *Picard v. ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland, N.V.)*, No. 20-2291 (2d Cir.) (the "RBS Second Circuit Appeal"), ECF No. 1.

WHEREAS, on October 6, 2020, the Second Circuit issued an order deferring its decision on Appellee's petition for a direct appeal pending resolution of the Related Appeals. *Id.* at ECF No. 48.

WHEREAS, on August 31, 2021, the Second Circuit issued a decision in the Related Appeals. *Picard v. Citibank, N.A. (In re BLMS LLC)*, 12 F.4th 171 (2d Cir. 2021).

WHEREAS, on October 26, 2021, the Parties filed a Stipulation in the Second Circuit to withdraw the RBS Second Circuit Appeal with prejudice pursuant to Federal Rule of Appellate Procedure 42(b). RBS Second Circuit Appeal, ECF No. 51.

WHEREAS, on October 27, 2021, the Second Circuit "so-ordered" the Stipulation and issued the mandate. *Id.* at ECF Nos. 57-58.

WHEREAS, on October 28, 2021, the Second Circuit denied Appellee's petition for direct appeal as moot in light of the Court's mandate issued on October 27, 2021. *Id.* at ECF No. 61.

WHEREAS, on November 4, 2021, the Court issued an Order directing the Parties to submit a joint letter detailing next steps in this case. ECF No. 24.

WHEREAS, on November 12, 2021, the Parties submitted a joint letter requesting the Court to order this Stipulation. ECF No. 25.

IT IS HEREBY STIPULATED AND AGREED that:

1. The Stay issued in the case is lifted, the Bankruptcy Court's Final Judgment is vacated, and the case is remanded to the Bankruptcy Court for further proceedings.
2. Each of the Parties shall each bear its own fees and costs incurred in connection with the Appeal.
3. The provisions of this Stipulation and Order shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.
4. This Stipulation and Order may be signed by the Parties electronically or in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation and Order shall be deemed an original.

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Dated: November 12, 2021
New York, New York

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*Attorneys for Defendant ABN AMRO Bank N.V.
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So Ordered this 12th day of November, 2021.



HON. VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE